UNITED STATES PATENT AND TRADEMARK OFFICE

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3404 E. Harmony Road	GEBRIL, MOHAMED M	
Mail Stop 79		
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chris.mania@hpe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte MUJTABA MOHAMMED HASSANPUR and IVAN MATIAS
FONT[1]

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Appeal 2016-007595
Application 13/742,283
Technology Center 2100

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Before ROBERT E. NAPPI, CARL L. SILVERMAN, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the
Examiner's final rejection of claims 1 through 20, which constitute all the
claims pending in this application. We have jurisdiction under 35 U.S.C.
§ 6(b).

We AFFIRM-IN-PART and enter a NEW GROUND OF
REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b).

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INVENTION

The invention is directed to a method for use with a volatile memory system, where files from persistent memory are copied to the volatile system and where open to writing /close to writing requests are tracked and used to synchronize the persistent and volatile memories. *See* Spec., Abstract.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the invention and is reproduced below:

1. A computer-implemented process comprising:

initiating a volatile file system, the initiating comprising copying all persistent files of a persistent file system from persistent memory to volatile memory to yield volatile files of the volatile file system;

in response to initiating the volatile file system:

redirecting at least some requests to open to writing or to close to writing persistent files of the persistent file system to the corresponding volatile files of the volatile file system;

tracking openings to writing and closings to writing of volatile files of the volatile file system to yield a synchronization record; and

synchronizing persistent files of the persistent file system to volatile files of the volatile file system based on the synchronization record.

REFERENCES AND REJECTIONS AT ISSUE

The Examiner rejected claims 1 through 6, 8, 9, and 11 through 15 under 35 U.S.C. § 103(a) as being unpatentable over Rajvanshy (US 2011/0225367 A1; pub. Sept. 15, 2011), Yoshida (US 2012/0324268 A1; pub. Dec. 20, 2012) and Flynn (US 8,527,693 B2; iss. Sept. 3, 2013). Answer 3–8.[2]

The Examiner rejected claims 7, and 10 under 35 U.S.C. § 103(a) as being unpatentable over Rajvanshy, Yoshida, Flynn, and Rostampour (US 8,407,396; iss. Mar. 26, 2013). *Id.* at 8–9.

The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Brundridge (US 2007/0220301; pub. Sept. 20, 2007), Rostampour, and Yoshida. *Id.* at 9–10.

The Examiner rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Brundridge, Rostampour, Yoshida and Rajvanshy. *Id.* at 10–11.

The Examiner rejected claims 18 through 20 under 35 U.S.C. § 103(a) as being unpatentable over Brundridge, Rostampour, Yoshida, Rajvanshy and Flynn. *Id.* at 11–13.

ISSUES

Appellants argue, on pages 7 through 11 of the Appeal Brief, that the Examiner's rejection of claims 1 through 6, 8, 9, and 11 through 15 is in error. These arguments present us with the following issues:

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[2] Throughout this Opinion we refer to the Appeal Brief dated November 18, 2015 and the Examiner's Answer mailed on May 19, 2016.

1) Did the Examiner err in finding the combination of Rajvanshy and Yoshida teaches copying all persistent files in a file system from persistent memory to volatile memory as recited in representative claim 1?

2) Did the Examiner err in not providing sufficient rationale to make the proposed combination?

Appellants argue the Examiner's rejection of claims 7 and 10 is in error for the same reasons as claim 1 and the additional teachings of Rostampour do not make up for the deficiencies argued with respect to claim 1. App. Br. 11.

Appellants argue, on pages 12 through 13 of the Appeal Brief that the Examiner's rejection of claim 16 is in error. These arguments present us with the following issues:

3) Did the Examiner err in finding the combination of Brundidge, Rostampour and Yoshida teaches copying all persistent files in a file system from persistent memory to volatile memory as recited in representative claim 16?

4) Did the Examiner err in not providing sufficient rationale to make the proposed combination?

Appellants argue the Examiner's rejection of claim 17 is in error for the same reasons as claim 16 and the additional teachings of Rajvanshy do not make up for the deficiencies argued with respect to claim 1. App. Br. 13.

Appellants argue the Examiner's rejection of claims 18 through 20 is in error for the same reasons as claim 16 and the additional teachings of

Flynn does not make up for the deficiencies argued with respect to claim 16. App. Br. 14.

ANALYSIS

We have reviewed Appellants' arguments in the Briefs, the Examiner's rejection, and the Examiner's response to the Appellants' arguments. Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 1 through 20.

Claims 1 through 15

Appellants' arguments directed to the first issue assert that neither Rajvanshy nor Yoshida teach transferring all of the persistent files in a file system from persistent memory to volatile memory. App Br. 7–8. Specifically, Appellants assert Yoshida teaches copying the file structure and mounting structure, not all files as claimed. *Id.* at 8. Further, Appellants argue the Yoshida teaches the copying is from RAM to RAM, not persistent memory to volatile memory as claimed. *Id.*

In response to Appellants' arguments, the Examiner identifies Rajvanshy teaches copying all files in a backfilling process in which data is copied back to a memory bank (volatile memory) from persistent storage (a database). Answer 13–14 (citing Rajvanshy, paras. 17 and 29). We have reviewed the cited teachings of Rajvanshy and concur with the Examiner's finding that Rajvanshy teaches copying from persistent to volatile memory, all persistent files as claimed. Accordingly, Appellants' arguments directed to the first issue have not persuaded us of error in the Examiner's rejection of representative claim 1.

Appellants arguments directed to the second issue assert that the Examiner's rationale to combine the references is insufficient, as the cited teaching of Yoshida, of the user not needing to access low speed secondary storage, is not related to the modification of copying files. App Br. 9–10 (citing Yoshida, paras. 56, 80–81, and Fig. 12).

We are not persuaded of error by these arguments. The Examiner has provided a comprehensive response to this argument on page 14 of the Answer. We have reviewed, and concur with, the Examiner's rationale. Accordingly, Appellants' arguments directed to the second issue have not persuaded us of error in the Examiner's rejection of representative claim 1. As Appellants have grouped claims 1 through 6, 8, 9, and 11 through 15, we sustain the Examiner's rejection of these claims. Further, as Appellants' arguments directed to dependent claims 7 and 10 rely upon the arguments directed to claim 1, we similarly sustain the Examiner's rejection of claims 7 and 10.

Claim 16.

Appellants' arguments directed to the third issue assert Brundidge, Rostampour, and Yoshida do not teach a copying all persistent files in a file system from persistent memory to volatile memory. App. Br. 12. Specifically, Appellants assert that Yoshida teaches copying the file structure and mounting structure, not all files as claimed. *Id.* at 8.

The Examiner responds by stating these arguments are not persuasive for the reasons discussed with respect to claim 1. We disagree. The Examiner's response to Appellants' arguments, with which we concur, is directed to the combination of Rajvanshy and Yoshida. Rajvanshy is not relied upon in the Examiner's rejection of claim 16. Accordingly, we do not

sustain the Examiner's rejection of claim 16 based upon Brundidge, Rostampour, and Yoshida.

Claims 17 through 20

Appellants' arguments directed to claim 17 assert that the Examiner's rejection is in error for reasons discussed with respect to claims 1 and 16. We are not persuaded by these arguments. Claim 17 is dependent upon claim 16. As discussed above, we do not sustain the Examiner's rejection of claim 16, as the Examiner has not shown that the combination of Brundidge, Rostampour, and Yoshida teaches copying all persistent files in a file system from persistent memory to volatile memory. However, in rejecting claim 17, the Examiner adds Rajvanshy to the rejection. As discussed above with respect to claim 1, we find Rajvanshy teaches copying all persistent files in a file system from persistent memory to volatile memory. Thus, Appellants' arguments do not persuade us of error in the Examiner's rejection of claim 17, and we sustain the Examiner's rejection of claim 17. Further, we apply the Examiner's rationale used to reject claim 17 to claim 16 and enter a new rejection of claim 16 based upon Brundidge, Rostampour, Yoshida, and Rajvanshy.

Appellants' arguments directed to claims 18 through 20 assert the rejection is in error for the same reasons as claim 16. The Examiner's rejection of claims 18 through 20 includes Rajvanshy; therefore, we sustain the Examiner's rejection for the same reasons as discussed with respect to claim 1.

DECISION

The decision of the Examiner to reject claims 1 through 15 and 17 through 20 is AFFIRMED-IN-PART. However, we enter NEW GROUND OF REJECTION against claim 16, by applying the Examiner's rationale and findings applied to claims 1 and 17 to claim 16.

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). This section provides that "[a] new ground of rejection . . . shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

> (2) *Request rehearing.* Request that the proceeding be reheard under §41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART; 37 C.F.R. § 41.50(b)